IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 45 OF 2005

Shri Joseph Pereira,
son of Benjamin Pereira,
major, bachelor, residing
in House No.9, St.Sebastian
Vaddo, Colvale, Bardez-Goa. ... Petitioner

versus

The State
through the Public Prosecutor
attached to the Court of Sessions
at Panaji. ... Respondent

Mr. Arun Bras De Sa, Advocate for the Petitioner.

Mr. S. N. Sardessai, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 16TH JANUARY,2006.

ORAL ORDER

Heard Mr. Arun Bras De Sa, the learned Counsel on behalf of the petitioner/accused and Mr. S. N. Sardessai, the learned Public Prosecutor on behalf of the respondent.

2. The petitioner/accused came to be prosecuted on a charge-sheet filed under Section 3 r/w Sections 25 and 29(a) (b) of the Arms Act, 1959 and at the time of framing of charge two objections were taken before the learned J.M.F.C., Mapusa. One objection was that the investigations of the case were conducted by the very Officer who had filed the F.I.R. However, the said objection has now been given up on behalf of the petitioner/accused. The other objection was that the sanction order dated 12-4-2002 issued by the District Magistrate disclosed non application of mind before issuing the said sanction inasmuch as the case papers of investigations were not produced before the said sanctioning authority-District Magistrate. This objection did not find favour with the learned J.M.F.C. who by his Order dated 31-7-2003 was pleased to overrule both the said objections.

3. The petitioner/accused carried out a revision to the Court of Sessions which was disposed of by the learned IInd Additional Sessions Judge, Panaji. The learned IInd Additional Sessions Judge in her Order dated 26-9-2005 observed that though there were no specific words to the effect that "the

learned District Magistrate had applied her mind to the records of the case before granting sanction order" reading of the said Order indicated that the learned District Magistrate had gone through the case papers and that was because what was stated by the District Magistrate in para 6 of the Order dated 12-4-2002, namely that she was satisfied that the possession of the said Fire Arms without valid license was in contravention of Section 3 r/w Section 25 of the Arms Act, 1959 and that being the position, prima facie, it appeared that the learned District Magistrate after getting satisfied with the material on the subject had accorded the said sanction.

4. The Criminal Revision Application filed by the petitioner/accused having been dismissed by the learned Additional Sessions Judge, Mr. Bras De Sa has submitted that the instant petition be treated as a petition under Section 482 of the Code of Criminal Procedure, 1973(Code, for short). Since the petitioner/accused has exhausted the revisional remedy there is no reason why this petition cannot be entertained under the extraordinary jurisdiction under Section 482 of the Code.

5. Mr. Bras De Sa, the learned Counsel on behalf of the petitioner/accused has repeated the submission earlier made and recorded namely that the sanction order dated 12-4-2002 does not disclose that there has been application of mind on the part of the District Magistrate prior to issuing the said sanction order. Mr. Bras De Sa further submits that the said Order dated 12-4-2002 does not even show that the case papers were at all produced before the District Magistrate, before the said sanction order dated 12-4-2002 could have been issued. Reliance has been placed by Mr. Bras De Sa on a decision of the Apex Court in the case of **State of T.N.** v. **M.M. Rajendran** ((1998) 9 SCC 268) wherein the Apex Court upheld the decision of the High Court that there was no proper sanction because it was not conclusively proved that all relevant materials including the statements recorded by the Investigating Officer were placed before the Commissioner of Police(Sanctioning Authority). That was a case which was decided on merits u/s 7, 13(2) r/w Section 13(i)(d)(i)(ii) of P.C. Act, 1988.

5. In my view, the observations of the Apex Court in the above case of **State of T.N.** v. **M. M. Rajendran**(supra) are inapplicable to the facts of the case at hand. We must remind ourselves that what the learned

J.M.F.C. was required to consider was whether there was a sanction order at the stage of framing of charge and the prosecution had indeed produced the sanction order given by the District Magistrate dated 12-4-2002. The said Order upon its perusal does prima facie show that the District Magistrate had given the requisite sanction, as required under the Arms Act, 1959. Whether there was indeed an application of mind or for want of it because the case papers were not produced is not a matter which could have gone into at the prima facie stage of framing of charge. The sanction has got to be taken at its face value and cannot be considered in detail and weighed in sensitive scale. The Court is not required to see whether sanction as given would be sufficient for the conviction of the accused. That exercise will have to wait for the final arguments of the case. The Courts below have considered the said sanction order dated 12-4-2002 as sufficient compliance of the necessary provisions of sanction for the purposes of framing of charge against the accused.

6. In the light of the above, there is no extraordinary case made out to invoke extraordinary jurisdiction under Section 482 of the Code. The application, therefore, is hereby dismissed.

N. A. BRITTO, J.

RD